

1 Michael M. Maddigan (SBN 163450)
2 Poopak Nourafchan (SBN 193379)
3 Vassi Iliadis (SBN 296382)
4 **HOGAN LOVELLS US LLP**
5 1999 Avenue of the Stars, Suite 1400
6 Los Angeles, California 90067
7 Tel: (310) 785-4600
8 Fax: (310) 785-4601
9 michael.maddigan@hoganlovells.com
10 poopak.nourafchan@hoganlovells.com
11 vassi.iliadis@hoganlovells.com

12 Attorneys for Defendants Blue Cross of
13 California d/b/a Anthem Blue Cross and
14 Anthem Blue Cross Life and Health Insurance
15 Company

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN JOSE DIVISION

19 COUNTY OF MONTEREY dba
20 NATIVIDAD MEDICAL CENTER,

21 Plaintiff,

22 v.

23 BLUE CROSS OF CALIFORNIA dba
24 ANTHEM BLUE CROSS, ANTHEM
25 BLUE CROSS LIFE AND HEALTH
26 INSURANCE COMPANY, and DOES
27 1 – 50, inclusive,

28 Defendants.

Case No. 5:17-cv-04260-LHK

The Honorable Lucy H. Koh

**DEFENDANTS' REQUEST
FOR JUDICIAL NOTICE IN
SUPPORT OF REPLY IN
SUPPORT OF MOTION TO
DISMISS**

Date: January 24, 2019

Time: 1:30 p.m.

Room: 8, 4th Floor

Complaint Filed: July 27, 2017
Trial Date: None Set

1 Pursuant to Federal Rule of Evidence 201, Defendants Blue Cross of
2 California dba Anthem Blue Cross and Anthem Blue Cross Life and Health
3 Insurance Company (“Anthem”) respectfully request the Court take judicial notice
4 of the following:

- 5
6 1. A true and correct copy of excerpts of the Administrative Services
7 Agreement for Jointly Administered Arrangements entered into
8 between Western Growers Assurance Trust, Western Growers, and
9 Anthem Blue Cross Life and Health Insurance Company, dated
10 effective January 1, 2017, attached as **Exhibit A**.
- 11
12 2. A true and correct copy of excerpts of the Administrative Services
13 Agreement for Jointly Administered Arrangements entered into
14 between Western Growers Assurance Trust-Milagrow, Western
15 Growers, and Anthem Blue Cross Life and Health Insurance
16 Company, dated effective January 1, 2013, attached as **Exhibit B**.
- 17
18 3. A true and correct copy of excerpts of the Administrative Services
19 Agreement for Jointly Administered Arrangements entered into
20 between Robert F. Kennedy Medical Plan and Anthem Blue Cross Life
21 and Health Insurance Company, dated effective September 1, 2012,
22 attached as **Exhibit C**.
- 23
24 4. A true and correct copy of excerpts of the Administrative Services
25 Agreement for Jointly Administered Arrangements entered into
26 between Laborers Health And Welfare Trust and Anthem Blue Cross
27 Life and Health Insurance Company dba Anthem Blue Cross and Blue
28 Shield, dated May 1, 2013, attached as **Exhibit D**.

5. A true and correct copy of excerpts of the Administrative Services Agreement for Jointly Administered Arrangements entered into between Operating Engineers Health and Welfare Fund and Anthem Blue Cross Life and Health Insurance Company, dated November 1, 2013, attached as **Exhibit E**.

6. A true and correct copy of excerpts of the Administrative Services Agreement for Jointly Administered Arrangements entered into between Operating Engineers Local 3 Health & Welfare Fund, Zenith American Solutions, Inc. (“TPA”), and Anthem Blue Cross Life and Health Insurance Company, dated November 29, 2016, attached as **Exhibit F**.

AUTHORITY

A. Applicable Standard

Judicial notice of a fact is proper where the fact is not subject to reasonable dispute because it is: (1) generally known within the territorial jurisdiction of the trial court or (2) “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Federal Rule of Evidence (“Rule”) 201(b)(2). Courts are required to take judicial notice of facts if requested by a party and supplied with the necessary information under Rule 201(c)(2).

B. Agreements Between Anthem Blue Cross Life and Health Insurance Company and Various ERISA Plans Referenced In Complaint

In ruling on a motion to dismiss, the Court may take judicial notice of matters referenced in the complaint. *Gerritsen v. Warner Bros. Entertainment*, 112 F. Supp. 3d 1101 (C.D. Cal. 2015). If the documents are not physically attached to

1 the Complaint, they may be considered if their authenticity is not contested and the
 2 plaintiff's Complaint necessarily relies on them. *Lee v. City of Los Angeles*, 250
 3 F.3d 668, 688 (9th Cir. 2001), overruled on other grounds by *Galbraith v. Cnty. of*
 4 *Santa Clara*, 307 F.3d 1119 (9th Cir. 2002).

5 Additionally, judicial notice of the text of a document referenced in a
 6 Complaint is proper under the doctrine of incorporation by reference. *See, e.g.,*
 7 *Glenbrook Capital Ltd. P'ship v. Kuo*, 525 F. Supp. 2d 1130, 1137 (N.D. Cal.
 8 2007) (taking judicial notice of documents incorporated by reference in plaintiff's
 9 Complaint); *see also Baxter v. Intelius, Inc.*, SACV09-1031 AG MLGX, 2010 WL
 10 3791487 (C.D. Cal. Sept. 16, 2010) (holding that the court may consider certain
 11 documents in a motion to dismiss that are central to the plaintiff's claims and are
 12 referred to by the plaintiff in the pleadings); *Knievel v. ESPN*, 393 F.3d 1068, 1076
 13 (9th Cir. 2005) (judicial notice is appropriate where the plaintiff's claim depends
 14 on the contents of a document, stating: "We have extended the 'incorporation by
 15 reference' doctrine to situations in which the plaintiff's claim depends on the
 16 contents of a document, the defendant attaches the document to its motion to
 17 dismiss, and the parties do not dispute the authenticity of the document, even
 18 though the plaintiff does not explicitly allege the contents of that document in the
 19 complaint.").

20 Here, Plaintiff Natividad Medical Center's ("Natividad") complaint
 21 specifically references Anthem's alleged agreement to serve as "plan administrator,
 22 or as the co-administrator, for various ERISA plans," including (1) Laborers Health
 23 and Welfare Trust Fund, (2) Operating Engineers Health and Welfare Trust Fund,
 24 (3) Western Growers Assurance Trust, and (4) Robert F. Kennedy United Farm
 25 Workers (Complaint, ¶¶ 7-8). Anthem's Request for Judicial Notice asks the Court
 26 to take judicial notice of the Administrative Services Agreement for Jointly
 27 Administered Arrangements between these four self-funded plans and Anthem Blue
 28

1 Cross Life and Health Insurance Company. True and correct copies of those
2 agreements are attached to this Request for Judicial Notice as Exhibits A through F.

3 These agreements are not only the subject of allegations in Natividad's
4 complaint, but they are also directly relevant to Natividad's claims and the
5 arguments Anthem has made in favor of dismissing those claims. Indeed, this
6 Court may consider these agreements in support of Anthem's Rule 12(b)(6) motion
7 to dismiss because the agreements are implicitly referenced in Natividad's
8 complaint and the documents are "central" to Natividad's claim. *See Venture*
9 *Assoc. Corp. v. Zenith Data Sys. Corp.*, 987 F.2d 429, 431 (9th Cir.1993).

11 CONCLUSION

12 For all of the foregoing reasons, Anthem respectfully requests that the Court
13 grant its Request for Judicial Notice as to Exhibits A through D.

14
15 Dated: October 29, 2018

HOGAN LOVELLS US LLP

16
17 By: /s/ Michael M. Maddigan

18 Michael M. Maddigan (SBN 163450)
19 Poopak Nourafchan (SBN 193379)
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